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OFFICE OF PETITIONS

In re Application of
Jasbir S. Seerha et al.
Application No. 10/075,079
Filed: February 12, 2002
Attorney Docket No. GI-5324 CI

ON PETITION

This is a decision on the petition filed July 29, 2004¹ to correct the filing date to February 12, 2002 rather than the presently accorded filing date of May 8, 2002, which is treated under 37 CFR 1.53.

On February 12, 2002, applicant filed the above-identified application. However, on April 23, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Items" stating that a filing date had been assigned but indicated that page 220 of the specification appeared to have been Omitted.

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the omitted item at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted item in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the omitted item was in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted item in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted item with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such item and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

Finally, the third option is in the absence of electing options 1) or 2) above, to constructively opt to accept the filing date which has been accorded with the papers filed upon application. With option 3), no petition under 37 CFR 1.182 is necessary for that purpose.

¹Petitioner has submitted proof that the petition was originally filed January 12, 2004.

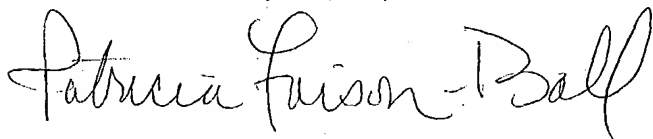
In this case, petitioners claim that by their inaction or their failure to submit page 220 of the specification with a petition under 37 CFR 1.182, they constructively opted to accept the February 12, 2002 without page 220 of the specification as part of the original disclosure.

A review of the file reveals that applicant neither admits nor denies that page 220 of the specification was present upon filing but on May 8, 2002 however, petitioners filed a preliminary amendment and a copy of page 220 of the specification.

Applicant's intentions with respect to the options available pursuant to the "Notice" were not clear and the filing of a copy of the omitted page may have confused the situation. However, since a petition under 37 CFR 1.182 was not filed and since an amendment was filed on May 8, 2002, it appears that applicant was constructively electing to have the application accepted as filed on February 12, 2002 without page 220 of the specification.

The Office of Initial Patent Examination will be notified to correct the filing date of the application to February 12, 2002 without page 220 of the specification as part of the original disclosure. In view of the fact that the issue fee has been paid and the application is ripe for issue, after a correction of the filing date, the application should be forwarded to the Publishing Division to be processed into a patent.

Any further concerns specific to this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions